

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
Petition Pursuant to 47 U.S.C. ' 160)
For Partial Forbearance From the) WT Docket No. 01-184
Commercial Mobile Radio Services)
Number Portability Obligation)

**COMMENTS OF THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION**

Introduction

In WT Docket No. 01-184, the Federal Communications Commission (Commission) issued a Public Notice on August 7, 2001, seeking comment on the petition filed by Verizon Wireless (Verizon) on July 26, 2001. *Verizon Wireless Petition Pursuant to 47 U.S.C. § 160 for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation*, WT Docket No. 01-184 (filed July 26, 2001) (*Petition*).

For the reasons stated below, the New Hampshire Public Utilities Commission (NHPUC) recommends that the Commission deny the petition for forbearance, restate its directive that certain wireless carriers provide local number portability (LNP) to their customers as of November 24, 2002, and assign staff to oversee directly the industry implementation of this directive, particularly with regard to coordination with small carriers.

As the Commission stated in its notice in this docket, current rules require commercial mobile radio service (CMRS or

wireless) providers to support service provider LNP in the top 100 Metropolitan Statistical Areas (MSAs) by November 24, 2002 (47 C.F.R. ' 52.31). Service provider LNP allows customers to keep their existing telephone numbers when switching from one local telephone service provider to another. On behalf of CMRS providers, Verizon Wireless seeks permanent forbearance from the requirement to allow its wireless customers to keep their telephone numbers if they switch to a different carrier. In its petition, Verizon Wireless noted that although it requests permanent forbearance from these LNP requirements, it does not request forbearance from the separate requirement concerning CMRS carriers' participation in thousands-block number pooling (pooling), pursuant to 47 C.F.R. ' 52.20, which is due to be implemented by the same November 24, 2002 date.

According to Verizon Wireless, forbearance is appropriate because the CMRS LNP requirements will impose complex technical burdens and expenses that are not justified by tangible economic benefits. Petition at 2.

The New Hampshire Public Utilities Commission (NHPUC) respectfully submits its Comments regarding Verizon Wireless's petition in this Docket. In summary, the NHPUC considers the following factors central to deciding whether or not forbearance is appropriate:

- 1) the costs and benefits of number portability;
- 2) the effect on numbering efficiency benefits of pooling without wireless LNP capability;
- 3) the harm to competition if customers must change telephone numbers in order to switch carriers, and the related impacts on rates and service.

Taking these factors into account as detailed below, the NHPUC recommends that the Commission deny Verizon Wireless=s petition. Failure to require LNP for wireless carriers will result in unreasonable rates, terms and conditions for wireless service, and will remove important protections now scheduled to be implemented to protect subscribers. NHPUC makes eight points in support of this recommendation.

1. The Petition Offers Only Unsubstantiated and Vague Assertions as to the Cost Burden From the LNP Requirement

Verizon Wireless acknowledges that it will be technologically ready for LNP by the deadline. It states in its petition that the network architecture used to support wireless pooling is the same architecture used for LNP. Petition at 11. Verizon Wireless also asserts that it will be ready and able to commence pooling in November 2002 in compliance with 47 CFR § 52.31. Thus, on the basis of Verizon Wireless=s own statements, technological readiness for pooling would also mean technological readiness for LNP. Nevertheless, Verizon Wireless claims that

LNP constitutes too great a burden as it will require additional upgrades and greater burdens:

While CMRS providers must make a number of upgrades (such as MIN/MDN separation) in order to become pooling capable, they would need to make additional upgrades, and incur considerably greater burdens, to provide single number portability.

Petition at 4.

Verizon Wireless does not support this contention. Verizon Wireless asks the Commission to look to its 15-page Appendix for detailed information on the incremental burdens posed by LNP. The Appendix discusses these burdens only in general terms. Aside from an unsubstantiated estimate of "tens of millions of" dollars that large wireless carriers might have to expend to hire, train, and supervise staff to handle porting tasks, the Appendix provides no cost data of any kind.

That the wireless industry can withstand the burdens of porting is demonstrated by the fact that wireless porting is being implemented elsewhere. As of the end of September, wireless number porting will be in effect in Australia. *Media Release #45*, Australia Communications Authority, www.aca.gov.au, September 17, 2001.

With respect to company-specific upgrades Verizon Wireless states are necessary, the Appendix references the need to make investments in programming, data processing capability and data

storage. The Commission may reasonably observe that the costs for computerized data processing including programming, and in particular calculation and storage capacity, are low, and have been coming down at dramatic rates historically.

Technical staff at Verizon integrated the wireless carrier's Point of Sale and legacy billing systems with Verizon's retail stores in a span of a few months. See, Verizon news article, <http://news.moneycentral.msn.comt/>, September 10, 2001.

Therefore, the NHPUC suggests that achieving the changes necessary for wireless LNP is not only possible but Verizon is pursuing them today.

Verizon Wireless' concerns with LNP do not relate essentially to the technology required for the network to support LNP, but rather to Verizon Wireless' internal business practices and operations. For instance, in the Appendix to its filing Verizon Wireless enumerates the need for upgrades to customer care and customer provisioning systems, such as training of sales people to understand the different options available to a customer when deciding whether to retain his or her number as opposed to taking a telephone with a different number. Verizon Wireless cannot reasonably claim that it has just now realized, after months of forbearance granted for other reasons, that LNP will pose the need for such internal changes. See, e.g., State

Coordination Group Comments, filed September 21, 2001, regarding the history of requests for forbearance and Commission patience with such requests. Accordingly, Verizon should have been able to provide by this point in time a much more detailed explanation of the costs, including these non-network-system costs, it will incur as it completes its implementation of LNP capability by the November 2002 deadline. The lack of such detail in the Petition and the Appendix undermines the argument that the costs will be as burdensome as Verizon Wireless characterizes them to be.

In addition, rather than address this task during the forbearance period, Verizon Wireless now requests that the Commission remove the obligation forever. Absent specific estimates of the magnitude of the costs of compliance, the Commission should not place great weight on the Verizon Wireless characterization of its burden. The NHPUC respectfully avers that Verizon Wireless's lack of progress to date in meeting its internal upgrade responsibilities is not a reason to forbear from enforcing them.

2. Rate Center Differences Do Not Present Special Problems

In industry and regulatory discussions preceding the filing of the petition, the question of rate center differences between wireless carriers and between wireless and wireline carriers has

been raised. The Petition lists two problems for LNP

implementation occasioned by the difference in rate centers:

In addition to the investment in systems hardware and software, portability will require carriers to set up systems to make comprehensible to their sales staffs and customers the limitations that the rate center system and carrier contracts place on customers' ability to switch carriers but keep their numbers.

Petition at 10.

Carriers will need to expand all their rating and taxation systems to account for all rate centers that may be potential donors of foreign MDNs within the carrier's license area. The rating systems need to ensure that all toll and long distance rates are calculated correctly for foreign MDNs, which will require more data space and computing capabilities.

Petition at 11.

The first problem exists today, and is not exacerbated significantly by allowing customers to keep their numbers when they switch carriers. Essentially, the Petition is pointing out that if two carriers have different calling plans, with different geographic areas within which calling is charged on the monthly flat rate, as opposed to on traffic-sensitive charges, customer sales and service representatives will have to be able to explain this difference to customers. The Petition implies that absent specific warnings to porting customers, some might think that simply because they are keeping their current number, their calling areas will not change. Few customers will switch carriers without inquiring whether the calling area will change,

as this is a basic component of the pricing of such service. The incremental training needed to ensure that sales representatives and customer care personnel advise porting customers of this fact is likely *de minimis*.

The second point the Petition makes regarding rate center differences is that the billing and other internal software must be upgraded with programming changes and memory upgrades in order for not only the network switches but the providers' back-office systems to distinguish the rating issues associated with two lines having the same NPA or NPA-NXX prefix. These incremental costs are discussed above. Thus, the fact that rate centers will differ between carriers even while customers can retain their telephone numbers does not constitute a separate reason to reconsider the Commission's outstanding Orders.

3. The Petition Undervalues the Benefits to Consumers of LNP

With respect to the benefits from LNP, the petition is silent. As noted by the State Coordinating Group, it is not possible to pass a cost-benefit test if no value is assigned to the benefit. But that does not mean there is no value to LNP for wireless. As noted below, LNP for wireless will enhance numbering efficiency. In addition, customers would like to be able to keep their numbers when switching carriers or services. This is such an unarguable proposition that it scarcely needs

support. According to a recent poll among wireless users in Australia, 73% of those polled would find LNP "of great interest." *Media Release #45*, Australia Communications Authority, www.aca.gov.au, September 17, 2001.

Certainly New Hampshire customers prefer to retain their numbers whenever possible when switching carriers. Having to go to the added expense of providing all current and potential telephone callers with information as to a new number, redoing stationery, reprogramming CPE, and risking the loss of important incoming calls as a result of caller confusion as to the correct number, are burdens on customers that must be taken in to account when a customer decides whether to switch. These are real costs, as much as the costs of upgrades to Verizon Wireless business practices and staffing. To weigh the latter against the former will require more evidentiary support than provided in the Verizon Wireless petition.

4. Lacking Full Accounting for Both Costs and Benefits of LNP Implementation, the Petition Fails to Demonstrate that Costs Outweigh Benefits.

As noted by the State Coordinating Group in its comments, the costs of LNP are unspecified and the benefits of LNP are ignored in the Petition. Thus, the Verizon Wireless claim that the costs outweigh the benefits has not been demonstrated.

5. Without number portability, the benefits of pooling are diminished.

Verizon Wireless agrees that number pooling is an effective means to optimize number resources and make more numbers available to meet the needs of CMRS carriers. Petition at 2. Without LNP, the difference in rate between carriers will limit the extent to which carriers and their customers can benefit from a pool of numbers. LNP that can enable the network to overcome this limitation.

Without LNP, it is possible that only donating CMRS carriers could take number blocks from pools of their numbers, while landline carriers would have to take number blocks from pools of landline numbers. It follows that the donated CMRS number blocks would, in effect, be held in reserve for the donating CMRS carrier in a particular rate center area rather than being available to assist the broader effort of number resource optimization. The implementation of LNP will avoid this risk and any carrier can use the donated number blocks. In order to optimize the efforts to utilize numbering resources wisely, CMRS providers should continue to be required to implement LNP.

6. Lack of LNP capability will deter competition between wireless carriers.

Verizon argues that wireless customers do not have the same concerns about number retention as landline customers and will not be deterred from changing from landline to wireless service or adding wireless service if they cannot retain their phone number. The argument is not sufficiently well-founded in the Petition, but more importantly it ignores a key arena for competition that is in fact impeded by lack of LNP, to wit, wireless to wireless competition.

With respect to wireline to wireless competition, Verizon Wireless presents data as to the explosive growth in wireless subscribership in the historic situation where customers must take a new or additional number in order to get wireless service. While this indicates that there is a vast market for service that has been tapped without LNP, it says little about the extent to which the balance of the landline market is effectively locked up by virtue of the inability to keep one's number when moving to wireless service.

With respect to wireless to wireless competition, Verizon Wireless points to the reduction in wireless prices as a result of existing forms of competition in the industry. This again is instructive, but not dispositive. Were customers able to switch wireless carriers without losing their number assignment, could

wireless prices have been pushed down even further, as a result of more vigorous competition?

Indeed, Verizon Wireless' own Appendix suggests that the answer may be "yes." In arguing that the LNP requirement will force carriers to spend large sums of money on staffing, Verizon Wireless states:

While Verizon Wireless believes that the availability of number portability will not by itself spur customers to change carriers, many customers will likely opt to retain their existing numbers if LNP is available, even when they decide to switch carriers for wholly separate reasons. Consequently, through the natural course of competitive churn, Verizon Wireless could face a large volume of porting activity, all of which will need to be serviced, even if number portability is not providing any discernible competitive benefit to customers.

Appendix at 13, emphasis supplied.

Thus, Verizon itself recognizes the competitive interest consumers have in the ability to choose between wireless providers without having to forego their telephone number as a price of switching.

7. The Public Interest in Deregulation Does Not Mandate Forebearance.

In its Petition, Verizon Wireless argues that given "pro-competitive developments, any need for the massive, complex regulation LNP represents is now less, not more." Petition at 30. Reliance on the public interest in deregulation is not apt in the case of LNP. The argument implicitly is that customer

service will improve and rates will come down by virtue of competition, and that regulatory intervention is unnecessary and burdensome. However, absent regulatory intervention, consumers will not realize the value of LNP. Wireless customers cannot choose a different wireless supplier if they are unhappy with their supplier's refusal to offer LNP. This same limitation on service is true of any wireless provider. There is no competition for the customer on the basis that some wireless providers offer LNP and some do not. Indeed, there cannot in fact be competition on such a basis until a significant number of wireless carriers offer LNP. Wireless carriers have consistently made clear that, absent regulatory directive, they will not implement LNP. Any carrier that does offer this benefit to its customers merely risks losing customers to a competitor. If no carrier offers the benefit, none bear this risk. Thus, competition will not spur providers to install LNP capability. Regulatory forbearance will not produce the benefits of LNP.

8. To the Extent Small Carriers Will Have Difficulty Implementing LNP, Commission Staff Oversight May Be Helpful

It has been observed that for LNP to be fully effective, the switches of all carriers, including small and remote CMRS carriers, will have to be upgraded to recognize the new routing and rating indicators. The major carriers have indicated that

they cannot control or direct the compliance activities of such providers. If the Commission is concerned with the possibility that lag in the upgrade activities of such providers will delay LNP achieving its full potential, it may be that Commission staff can be useful in educating the providers as to their responsibilities, directing them to resources for achieving implementation, and facilitating the development of meaningful schedules for implementation.

CONCLUSION

As observed in the comments of the State Coordination Group, the wireless industry has been provided ample time to implement LNP capability. In the February 9, 1999 Forbearance Order the Commission extended the deadline to allow CMRS carriers greater flexibility for these and other improvements that will enhance service to the public and promote competition. Verizon Wireless and the other carriers were aware then of the Commission's expectations and the technology and system investments that were necessary. Verizon Wireless has stated that the technology necessary for pooling will also allow number portability, and is prepared to meet the November 2002 deadline for installing the necessary system architecture. The wireless industry has long been aware of the company-specific upgrades that will be needed to implement the LNP requirement.

The Petition fails to account properly for the benefits of wireless LNP, fails to provide substantial evidence of the burdens of implementing LNP, and fails to satisfy the statutory grounds for forbearance. For the above reasons, the NHPUC respectfully recommends that the Commission deny the request for forbearance, restate its directive that certain wireless carriers provide local number portability (LNP) to their customers as of November 24, 2002, and assign staff to oversee directly the industry implementation of this directive, particularly with regard to coordination with small carriers.

Respectfully submitted this 21st day of September, 2001,

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

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